

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC SCHERZER, as Trustee of the
VOLUNTARY HOSPITALS HOUSE
STAFF BENEFITS PLAN,

Plaintiff,

-against-

CARITAS HEALTH CARE INC.,

Defendant.

07 CV 7005 (WHP)

SETTLEMENT AGREEMENT

WHEREAS, the Voluntary Hospitals House Staff Benefits Plan (the Plan) is a multi-employer welfare benefit plan which provides benefits to certain employees of Caritas Health Care, Inc. ("Caritas"); and

WHEREAS, pursuant to a collective bargaining agreement between the Committee of Interns and Residents ("CIR") and Caritas, Caritas is obligated to make monthly contributions to the Plan on behalf of participating House Staff Officers at Caritas; and

WHEREAS, the Plan seeks to recover contributions which it alleges are owed to the Plan by Caritas; and has filed a lawsuit captioned as Scherzer v. Caritas Health Care, Inc., 07-CV-7005; and

WHEREAS, the parties wish to settle this matter and Caritas wishes, to the best of its ability, to enter into this Settlement Agreement ("the Settlement Agreement") to satisfy its obligations to CIR and to the Plan; and

WHEREAS, the Plan has determined that it is in the best interests of its participants and beneficiaries to enter into this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual promises and obligations provided in this Settlement Agreement for good and valuable consideration, the parties agree as follows:

1. Contributions due to the Plan for the month of July, 2007 are \$134,976.00. Caritas has paid \$134,273.00 to the Plan for contributions for the month of July, 2007 and agrees to pay an additional \$703.00 on or before November 1, 2007.
2. Contributions due to the Plan for the month of August 2007 are \$133,570.00. Caritas has paid \$132,867.00 to the plan for contributions for the month of August 2007 and agrees to pay an additional \$703.00 on or before November 1, 2007.
3. Contributions due to the Plan for the month of September 2007 are \$132,867.00. Caritas has paid \$132,164.00 to the plan for contributions for the month of September 2007 and agrees to pay an additional \$703.00 on or before November 1, 2007.
4. Contributions due to the Plan for the month of October 2007 are \$134,976.00. Caritas has paid \$134,273.00 to the Plan for contributions for the month of October 2007 and agrees to pay an additional \$703.00 on or before November 1, 2007.
5. On or before November 1, 2007, Caritas will pay \$11,075.78 in unpaid interest due to the Plan incurred from the payment of late contributions for the months of April 2007 through September 2007.
6. Caritas agrees to pay to the Plan court filing fees in the amount of \$300.00 and legal fees in the amount of \$1,000.00 on or before November 1, 2007.
7. The parties agree that if Caritas makes all payments to the Plan under this Settlement Agreement as set forth in paragraphs 1 through 6 of this Settlement Agreement, the Plan shall voluntarily dismiss this action.

8. The parties further agree that, assuming Caritas satisfies all of the obligations set forth in this Settlement Agreement, Caritas will be considered to have fully satisfied all of its obligations to the Plan, as of the date of this Settlement Agreement, subject to any issues arising out of a later payroll audit. Further, and assuming that Caritas has satisfied its obligations under this Settlement Agreement, the Plan waives any rights to pursue any additional remedies, including interest or penalties or liquidated damages against Caritas, arising out of any delinquent contributions to the Plan, for the period from April 2007 through the date of this Settlement Agreement, except for any contributions owed as a result of any payroll audit that may occur.

9. The parties agree that should the Plan fail to receive the payments due from Caritas on the day that they are due, it shall be deemed in default under this Settlement Agreement and the Plan may sue to enforce the terms of this Agreement.

10. The parties agree that their respective obligations under this Settlement Agreement shall not be affected should they have a dispute concerning the amount owing for any Current Contributions. Caritas agrees that it is obligated to make the Current Contributions demanded by the Plan and will thereafter seek an adjustment of such Contribution if appropriate.

11. The parties do not waive any rights they may have been under the Collective Bargaining Agreement between Caritas and CIR to audit the books and records of Caritas and to collect any amounts which may be due for any period not previously audited, for the purpose of determining whether Caritas owes to the Plan contributions on behalf of participating House Staff Officers in addition to those already invoiced.

12. This Court shall retain jurisdiction over this matter for all purposes, including but not limited to, the enforcement of the terms of this Settlement Agreement without the necessity of a separate action being commenced.

13. This Settlement Agreement constitutes the entire agreement between the parties and the parties hereby revoke any prior agreements which might exist regarding this matter.

14. This Settlement Agreement may only be amended by a written instrument executed by both parties.

15. This Settlement Agreement may not be assigned.

16. This Settlement Agreement shall be governed by the laws of the State of New York to the extent that it is not preempted by Federal Law.

VOLUNTARY HOUSE STAFF
BENEFITS PLAN

CARITAS HEALTH CARE, INC.

By: 

Eric Scherzer
Trustee, VHHSBP

By: 

Name: Richard J. Sarli
Title: Chief Financial Officer
Caritas Health Care, Inc.

Date: 11/7/07

Date: 10/31/2007

SO ORDERED:

U.S.D.J.

Date